

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                         |   |                       |
|-------------------------|---|-----------------------|
| NFS LEASING, INC.,      | ) |                       |
|                         | ) |                       |
| Plaintiff,              | ) |                       |
|                         | ) |                       |
| v.                      | ) | No. 4:23-CV-00203-AGF |
|                         | ) |                       |
| SA HOSPITAL ACQUISITION | ) |                       |
| GROUP, LLC, ET AL.,     | ) |                       |
|                         | ) |                       |
| Defendants.             | ) |                       |

MOTION HEARING  
BEFORE THE HONORABLE AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

FEBRUARY 28, 2023

APPEARANCES:

|                          |                                     |
|--------------------------|-------------------------------------|
| For Plaintiff:           | Randall F. Scherck, Esq. (by video) |
| <i>NFS Leasing, Inc.</i> | Kiran Jeevanjee, Esq. (by video)    |
|                          | GREENSFELDER HEMKER PC              |
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|                          | St. Louis, MO 63102                 |

|                              |                                    |
|------------------------------|------------------------------------|
| For Defendant:               | David P. Stoeberl, Esq. (by video) |
| <i>American Healthcare</i>   | Thomas H. Riske, Esq. (by video)   |
| <i>Systems Missouri, LLC</i> | CARMODY MACDONALD, PC              |
|                              | 120 S. Central Avenue, Suite 1800  |
|                              | St. Louis, MO 63105                |

|                                |                                    |
|--------------------------------|------------------------------------|
| For Defendant:                 | Mayer S. Klein, Esq. (by video)    |
| <i>SA Hospital Acquisition</i> | FRANKEL RUBIN, PC                  |
| <i>Group</i>                   | 231 S. Bemiston Avenue, Suite 1111 |
|                                | Clayton, MO 63105                  |

REPORTED BY: CARLA M. KLAUSTERMEIER, RMR, CRR, CSR, CRC, CCR  
Official Court Reporter  
United States District Court  
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PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

1                   **(The proceedings commenced at 10:00 a.m.)**

2                   **THE COURT:** Good morning. We are here in the matter  
3 of NFS Leasing, Inc., v. SA Hospital Acquisition Group, LLC,  
4 American Healthcare Systems, LLC, and American Healthcare  
5 Systems Missouri, LLC. It is Case No. 4:23-CV-203-AGF.

6                   This matter is before the Court on Plaintiff  
7 NFS Leasing, Inc.'s motion for a prejudgment writ of  
8 attachment against Defendant SA Hospital Acquisition Group,  
9 LLC.

10                  And the plaintiff had actually filed this litigation  
11 on February the 20th requesting immediate ex parte relief and  
12 there were issues with respect to jurisdiction that the Court  
13 needed to address and those were addressed in an amended  
14 complaint, and so the matter is before us.

15                  And why don't you state who is here on behalf of the  
16 plaintiff, NFS Leasing.

17                  **MR. SCHERCK:** Good morning, Your Honor. Randy  
18 Scherck, Greensfelder, Hemker & Gale, on behalf of  
19 NFS Leasing, Inc., the plaintiff.

20                  **MS. JEEVANJEE:** And Kiran Jeevanjee also for  
21 Greensfelder, Hemker & Gale on behalf of Plaintiff.

22                  **THE COURT:** All right. And as I stated, the  
23 plaintiff wished to proceed here ex parte. But the Court was  
24 unwilling to do that without providing notice to the  
25 defendants and so we did provide notice to the defendants.

1 Although I gather from some of what we have read that the  
2 defendants did, in fact, have notice that the lawsuit itself  
3 was being filed. I wished to provide notice to the defendants  
4 before we proceeded and not proceed on an ex parte matter,  
5 although the Missouri statute does, in fact, provide for  
6 ex parte relief.

7 And so we did contact counsel that the plaintiff  
8 advised us had been representing these parties, and now that I  
9 see that appearances have been filed by the defendants.

10 And why don't you state your appearance on behalf of  
11 SA Hospital Acquisition Group.

12 **MR. KLEIN:** Good morning, Your Honor. Mayer Klein,  
13 Frankel Rubin Klein, on behalf of SA Hospital.

14 **THE COURT:** All right. And then on behalf of the  
15 two Healthcare Systems, LLC, and Healthcare Systems Missouri,  
16 LLC?

17 **MR. STOEBERL:** Good morning, Your Honor.

18 **MR. RISKE:** Good morning, Your Honor. Tom Riske and  
19 Dave Stoeberl, of Carmody MacDonald, appearing for American  
20 Healthcare Systems Missouri, today, Your Honor.

21 **THE COURT:** All right. And I see that entries of  
22 appearance have now been filed by those defendants. And so --

23 **MR. STOEBERL:** Your Honor, if I -- I'm sorry to  
24 interrupt. But if I may, while we fully expect to be entering  
25 for American Healthcare Systems as well, we have just entered

1 for the Missouri entity at this time. I just -- given the  
2 lack of notice and our scrambling to get things together, I've  
3 not confirmed that. I fully suspect that will be the case  
4 given the relationship. I just want to be clear for the  
5 record that our appearance, at this time, is limited to  
6 American Healthcare Systems Missouri, LLC.

7 **THE COURT:** And thank you for that correction. I  
8 had not noticed that on your entry of appearance. And so I  
9 will note that. But I take it, Mr. Riske, you do have  
10 communications, however, with American Healthcare Systems,  
11 LLC, as well, although you are not in a position to enter an  
12 appearance on their behalf?

13 **MR. RISKE:** That is correct, Your Honor.

14 **THE COURT:** All right. And so, as I said, this  
15 matter is here on an ex parte request for emergency relief in  
16 which the plaintiff is seeking a prejudgment writ of  
17 attachment against SA Hospital Acquisition Group, LLC, and  
18 essentially wishes to go in and attach and remove the  
19 equipment that it has leased to SA Hospital Acquisition Group,  
20 LLC.

21 And I gather from everything that was filed in this  
22 matter by the plaintiff and the affidavit in support of that  
23 acquisition that the parties have been engaging in ongoing  
24 discussions with respect to this matter and they have not  
25 resulted in any resolution acceptable to the plaintiff at this

1 time and that has brought us to where we are today.

2 Now, let me ask you. You know, typically, when  
3 someone is seeking a TRO, I will get all the attorneys on the  
4 phone and we'll talk about it and we'll see if there is some  
5 way to resolve this matter short of the extraordinary relief  
6 that the plaintiff is seeking. The plaintiff had concerns  
7 about the safety of its equipment here. And so we have  
8 proceeded in this manner; namely, to set the hearing, advise  
9 defendants of that, and also advise counsel that I was  
10 expecting that counsel would advise the defendants that I did  
11 not expect there to be any actions taken that might imperil  
12 the safety of the collateral and the equipment while we  
13 proceeded here today.

14 And so I trust that counsel has adhered to that and  
15 that no actions are being taken at this moment to impair the  
16 plaintiff's collateral?

17 **MR. STOEBERL:** Correct, Your Honor.

18 **MR. RISKE:** Yes, Your Honor. On behalf of the  
19 hospital, I can tell you that, 100 percent.

20 **THE COURT:** All right. So let me just ask you all.  
21 Would it be at all productive for us to have any discussion  
22 off the public record with respect to this matter for a few  
23 minutes before we proceed with respect to the formal hearing?

24 **MR. KLEIN:** At least on behalf of the hospital, I  
25 would say yes.

1           **MR. RISKE:** On behalf of AHS, we would agree,  
2 Your Honor.

3           **MR. SCHERCK:** Well, Your Honor, hearing that is a  
4 very optimistic thing to hear. Because as you've read from  
5 the pleadings, we've been trying to get paid, resolve this for  
6 now almost seven months. So --

7           **THE COURT:** I understand that.

8           **MR. SCHERCK:** I know. I know, Your Honor.

9           **THE COURT:** And I'm not suggesting we will not  
10 return to the open record.

11           **MR. SCHERCK:** No. I understand that. I understand  
12 that. I appreciate that. I also wanted to mention that, on  
13 the phone, are two of the -- I believe they're both on the  
14 phone -- two of the in-house attorneys for NFS who are --

15           **THE COURT:** Okay.

16           **MR. SCHERCK:** -- listening to the call as well.  
17 Obviously, this is very, very important to them.

18           But hearing from Mr. Klein and Mr. Stoeberl and  
19 Mr. Riske that they have some interest in resolution, we are  
20 happy to talk.

21           **THE COURT:** All right. And so I just want to give  
22 us a few minutes to go that direction and not forgo that  
23 direction because, obviously, what we are talking about is  
24 extraordinary relief. And, honestly, I don't even know what  
25 kind of volume of equipment this translates to. I mean, I

1 have seen the list, but I don't know what that means. And if  
2 the plaintiff is actually requesting that the marshals go in  
3 and retrieve that property for the plaintiff -- and before we  
4 head down that road, I thought it might be worthwhile for us  
5 to have just a few minutes of discussion off the public  
6 record.

7           Everybody comfortable doing that?

8           **MR. RISKE:** Yes, Your Honor.

9           **MR. SCHERCK:** Yes, Your Honor.

10          **MR. KLEIN:** Yes. Yes, Judge. Thank you.

11          **THE COURT:** All right. So, Carla, we're going to  
12 ask you to stand down for just a minute while we have a  
13 discussion off the public record. Okay?

14          **MR. SCHERCK:** Your Honor?

15          **THE COURT:** Yes.

16          **MR. SCHERCK:** Fair enough. I was going to -- since  
17 my clients are on the phone, certainly, they should  
18 participate in this, and I'm going to call them on my cell and  
19 bring them in because I assume we're going to do this via the  
20 Zoom meeting that we're at to have our discussion?

21          **THE COURT:** Well, I assume that they can hear us  
22 right now. And if they wanted to discuss something, all they  
23 would have to do is unmute.

24          **MR. SCHERCK:** Okay. Fair enough.

25          **THE COURT:** The only person that needs to stand down

1 at this moment is Carla, our court reporter.

2 **MR. SCHERCK:** Fair enough.

3 **THE COURT:** She's going to stop making a transcript.  
4 Otherwise, we're all going to stay on here and the other  
5 people who are on here are simply the brains of the operation,  
6 my career law clerk and one of our interns. All right?

7 **MR. SCHERCK:** Great. Thank you, Your Honor.

8 **(A discussion took place off the record.)**

9 **THE COURT:** All right. So we have had a discussion  
10 off the public record. And while the parties have discussed  
11 certain aspects such as the defendants have -- well, at least  
12 Defendant SA Hospital has agreed to promptly permit  
13 NFS Leasing to enter the property and inspect the equipment,  
14 we have not -- the parties were not able to make any further  
15 progress on any issues related to this matter.

16 And so we will proceed here with a hearing on NFS'  
17 request for prejudgment attachment in this matter.

18 **MR. SCHERCK:** I assume I may proceed, Your Honor?

19 **THE COURT:** You may.

20 **MR. SCHERCK:** Thank you, Your Honor. I appreciate  
21 that.

22 Your Honor, I know you have read the pleadings.

23 **THE COURT:** This is Randy Scherck on behalf of the  
24 plaintiff.

25 **MR. SCHERCK:** Yes. I'm sorry.



1           **THE COURT:** Please announce yourself.

2           **MR. SCHERCK:** This is -- yeah, I apologize. I'm  
3 sorry. Randy Scherck on behalf of the plaintiff,  
4 Greensfelder, Hemker & Gale. Thank you, Your Honor.

5           I am not going to go through the extensive pleadings  
6 that we filed. They speak for theirself. We filed a motion  
7 for prejudgment attachment. We filed a memorandum in support.  
8 We filed a proposed order. We filed a very, very extensive  
9 affidavit which supports our entitlement to the prejudgment  
10 attachment. I'm just going to hit the highlights, if I may,  
11 Your Honor, if that would be acceptable.

12           First, NFS Leasing, the plaintiff, is an independent  
13 small company of roughly 30 employees in Massachusetts. As I  
14 mentioned earlier, in-house counsel is on the phone.

15           The defendant, SA Hospital, entered into a master  
16 lease with a schedule agreement in 2021. So it's been in  
17 effect for almost two years. Their default occurred on  
18 September 1, 2022. The lease payments were -- the principal  
19 balance was approximately \$86,000 a month with taxes and so  
20 forth, came out to roughly \$98,000 a month. So the total  
21 lease payment was just shy of 100,000 a month. They have not  
22 paid it for six months. The seventh month will be due  
23 tomorrow.

24           We have been trying for months and months and  
25 months. We've heard promises after promises which are

1 outlined in the affidavit. Unless the Court wants me to go  
2 through some of those, I am not going to do so. I'm happy to  
3 give some of the highlights. But months and months and months  
4 with both SA Hospital representatives, and then, subsequently,  
5 when we found out about the involvement of AHS, as a  
6 purchaser/operator of the hospital, they're involvement, we  
7 have been attempting to work out payments. We have been  
8 attempting to get somebody, if AHS is taking over, to assume  
9 the lease. We have been promised payments left and right.  
10 None of those promises have occurred. We have received zero  
11 dollars. We have received nothing since September, 2022.

12 That's our -- that's our case. We have filed a  
13 complaint, as the Court is aware, for replevin of the  
14 equipment and we're here on the prejudgment attachment for  
15 replevin of the equipment. We have also filed against the AHS  
16 entities for conversion because, frankly, according to them,  
17 they're operating the hospital and using our equipment. And  
18 also, for unjust enrichment. We're not before the Court on  
19 those issues, but I just wanted to give the Court a little  
20 bit, and on the record, a flavor of the lawsuit and where it  
21 is.

22 We are -- as Mr. Klein indicated earlier, there's a  
23 separate lawsuit for the monetary portion with respect to the  
24 lease payments going on in Massachusetts. Our case here in  
25 Missouri is based on recovery of the equipment which we own.

1 Also, to a conversion and unjust enrichment action against the  
2 AHS entities.

3 We are also -- and I want this to be clear. There  
4 are two elements to our prejudgment attachment. One is,  
5 of course, the leased equipment which is attached to our  
6 documents and outlined. And we have indicated an estimated  
7 value of roughly 2.1 million based on the experience of  
8 NFS Leasing valuing the equipment.

9 I think it's important to understand, Your Honor,  
10 that this originally was a sale and lease-back. Apparently,  
11 SA Hospital had gone through a bankruptcy. They needed  
12 financing. They said, we have this equipment, we own all this  
13 equipment. And so they then basically sold it to us and then  
14 we leased it back to them. I believe the original amount of  
15 the transaction was roughly 2.5 million. And the balance at  
16 this point is just shy of 1.7 million. Again, we're not  
17 seeking that monetary amount. But just to give you a flavor  
18 of the dollars that are at stake here.

19 We have done everything in our power to try to work  
20 this out. And as I've said, received just no cooperation, no  
21 payment, nothing. We've asked for access to the equipment.  
22 It's been denied. You've seen the e-mail indicating that they  
23 wouldn't let us in to see our own equipment. That tells you  
24 that the actions of SA Hospital, and potentially, AHS, are  
25 nefarious. Why would they not let us in to see our own

1 equipment to inventory it?

2 I'm glad to hear that they are going to allow us to  
3 do that today. We had to bring this lawsuit and get before  
4 Your Honor on a prejudgment attachment for somebody on their  
5 behalf to say, Oh, yes, you can come in and look at and  
6 inventory your equipment.

7 The actions have been so time consuming and  
8 difficult that we have actually been forced into the position  
9 that we're into right now. And it's unfortunate that we're  
10 here today. We don't want to be here, frankly. We wanted a  
11 deal worked out. We tried. It failed.

12 Now, is that a basis to give us a prejudgment  
13 attachment? No. That's just a little bit of the background  
14 so Your Honor, and for the record, understands where things  
15 are. Over six months of going through with representatives of  
16 SA Hospital and AHS and trying to get payments, trying to get  
17 someone to take responsibility has not done.

18 Now, the standards were prejudgment attachment. We  
19 have cited in our pleadings three of them. One, where a  
20 defendant is not a resident of this state, the record is very  
21 clear that -- and by the way, for this action today,  
22 Your Honor, it technically, and they're -- they really don't  
23 have standing. They may try to assert it. But the AHS  
24 entities -- this is not directed against them. Just so the  
25 record is clear, this is only directed against SA Hospital

1 because that is, we believe, who is the -- certainly, they're  
2 the lessee, and we believe also, is, of course, the owner of  
3 the equipment, although we've been told there's a sale  
4 transaction.

5           So we have two UCCs that have been filed. One in  
6 our leasing interest and the other one, a general blanket UCC  
7 on assets, which under the UCC would be defined as the  
8 equipment. Obviously, we're not interested in the  
9 receivables. We do not have a lien on bank accounts or  
10 anything like that. But on all the equipment. So not only  
11 the equipment that's leased, but any additional  
12 assets/equipment that is located at SA Hospital.

13           As I indicated, Defendant is not a resident --  
14 SA Hospital is not a resident of the state. That is one  
15 grounds on it, by itself. That's sufficient. However, I  
16 understand why the Court, and typically, a Court would want  
17 more than that.

18           The second ground, where the defendant is about  
19 fraudulently to convey or assign his property or effects so as  
20 to hinder or delay his creditors. We have heard and there is,  
21 as part of the record, e-mails between my client and AHS, and  
22 I believe also involving SA Hospital, in which they have  
23 indicated that they have acquired the interest or they're in  
24 the process of acquiring. We don't know at what stage they  
25 are of acquiring the hospital.

1 But, that, to take our leased equipment, which we  
2 own, and the statute says, 521.010(9), to convey or assign his  
3 property or effects so as to -- it says hinder or delay his  
4 creditors. That's exactly the effect that this is having. If  
5 they have -- if they have conveyed or assigned, however  
6 they've done it, by a sale transaction, and they've done it  
7 two ways. One, by a sales transaction which may or may not be  
8 closed. Secondly, by granting a lien to AHS. That is in  
9 violation of 521.010.

10 And also, I think it's critical, Your Honor. It  
11 says, where it says the defendant is about. So it doesn't  
12 even have to have occurred yet. About fraudulently to convey.  
13 To be selling the assets of the hospital -- I'm assuming it's  
14 an asset purchase agreement, although, of course, I haven't  
15 seen it -- which would include our assets that we own, that  
16 were leased. That's a fraud.

17 And Your Honor knows very well that fraud is not  
18 something that anybody's going to admit. It has to be  
19 inferred. By these actions of transferring, having this new  
20 entity involved, that is clearly an attempt to delay or hinder  
21 NFS Leasing, which is a creditor. So on that element, we  
22 certainly are successful, and we certainly have established  
23 that by the series of e-mails. And, frankly, I think the  
24 defendants would even admit that they're engaged in that type  
25 of transaction.

1           The third element that we pled -- excuse me, I need  
2 to grab a little -- where the defendant is about fraudulently  
3 to conceal, remove, or dispose of his property or effects,  
4 again, so as to hinder or delay his creditors, 521.010(10).  
5 We've heard today for the first time, they're not going to  
6 conceal it or hide it from us anymore. They're going to let  
7 us go in.

8           Well, prior to filing this, we are not able to do  
9 that. So just based on the record before you, other than  
10 statements of counsel, they have concealed the -- our assets  
11 from us by not letting us in there to inventory it. It  
12 appears that that part of the claim/issue may have been  
13 resolved. Remove or dispose of property of effects. Again,  
14 dispose, to me, also means transfer, to sell. Again, that is  
15 what they're doing. And the keyword also is "about." The  
16 whole concept in my mind, Your Honor -- the whole concept is  
17 to protect the, in this case, NFS Leasing, from what is about  
18 to happen.

19           Yes, we've heard representations from counsel that  
20 they are not going to remove the property. It's an operating  
21 hospital. But we don't know if that's true. We haven't been  
22 given access to the hospital. We don't know if employees of  
23 the hospital have removed the equipment. We don't know if  
24 other parts of the equipment -- I believe, and I can be  
25 corrected if I'm wrong -- there may be some -- as part of the

1 affidavit, there might have been something in there where  
2 parts of the equipment, assets, which are subject to either  
3 our lease or a lien, are going to be sold to another party,  
4 not even AHS. Another party. I believe there was an e-mail  
5 in there to that effect. Kiran is attempting to locate it.  
6 But they may be selling to a third party.

7 Well, if they're telling us they're selling to a  
8 third party, then you can be darned sure that those assets are  
9 going to disappear somewhere or be held by someone else. So I  
10 think there's two very, very important elements here,  
11 Your Honor. One, the fact that they have engaged in this  
12 transaction to really deprive NFS Leasing of their ownership  
13 interests in the property, and their lien on the other  
14 equipment, because it's important to note that we have both.

15 And, secondly, besides the fact that they've entered  
16 into this transaction, there are multiple lawsuits out there  
17 against this entity. Frankly, I was involved in a prior one.  
18 There's out-of-state cases, collection actions, other actions  
19 that are against SA Hospital. I hate to say this. This is  
20 unfortunate. But this hospital is not long for life. And,  
21 certainly, they should not be permitted, or AHS, as the case  
22 may be, should not be permitted to use and profit -- they're  
23 making money, presumably, by using our equipment on which we  
24 own and which we have a lien without paying for it. And  
25 that's exactly what they've been doing for the past seven



1 months.

2           There is no dispute. You didn't hear anything  
3 either off the record or on the record that they've made any  
4 payments. Just that, Well, we're going to talk to them and  
5 try to get something worked out. Well, they -- we've been  
6 doing that and our patience is finished. We have been more  
7 than reasonable. We are the victim here. We have been more  
8 than reasonable in trying to work something out. And we have  
9 been stonewalled right and left by AHS and SA Hospital in  
10 trying to get payment.

11           I understand that maybe they don't have any money.  
12 That's not our problem. We're a small company. This is a  
13 big, big deal to us. This is important. I mentioned earlier,  
14 another thing that is sort of evidence of this transfer and  
15 conceal, we have learned, and it's paragraph 61 of the  
16 affidavit, that the landlord had sold the property to a  
17 different entity, Twain, by special warranty deed and sold the  
18 improvements on the property to SA Hospital Real Estate  
19 Holdings, LLC, by special warranty dated December 21, 2021.

20           So SA Hospital has actually sold, and there's now a  
21 different entity that actually owns the land. So who knows  
22 where everything is going to end up? We have no comfort level  
23 that people, other creditors and AHS for that matter, or maybe  
24 some other third party, is not going to come in here and  
25 remove our assets. We've not been given access to our assets.

1 We are entitled as a matter of law to a replevin. We are  
2 entitled to that under the documents. We are easily able to  
3 prove, and I don't know if the Court wants me to go into it,  
4 but we are easily able to prove the basis for a replevin. I  
5 will very quickly go through what the standards are.

6           The first standard for a replevin, which is what the  
7 prejudgment attachment is based on. So I think it is  
8 important that we establish for the record the basis of a  
9 replevin action. AHS is the owner of the personal property.  
10 That's not -- I don't think that's going to be in dispute.  
11 Or -- or entitled to possession. So either by virtue of the  
12 lease or by virtue of the UCC filing pursuant to our security  
13 agreements signed by SA Hospital back in 2021, we are entitled  
14 to possession.

15           Two, the property is wrongfully detained by the  
16 defendant. There's no doubt about that, Judge. The documents  
17 speak for themselves. Not only when you can see from all of  
18 the e-mail exchanges and all the efforts to collect, but the  
19 security agreement that is signed, the equipment lease  
20 agreement entitles us upon default to possession and is  
21 wrongfully being detained by Defendant SA Hospital.

22           The third aspect for replevin is the value of it.  
23 We have provided that, Your Honor, in one of our attachments.  
24 I believe the value is roughly 2.1 million. That's not an  
25 exact figure. But that's roughly what my client has valued

1 the equipment.

2 Four, the property has not been seized by any  
3 process, execution, or attachment. We believe that to be the  
4 case. But -- and this is where it really goes into the  
5 element and why we should be granted a prejudgment attachment  
6 today. We are fearful that that is going to happen. There  
7 are these other lawsuits out there that, any day, can get a  
8 judgment. Any day, they can come into the hospital, run an  
9 execution, whether it's through an out-of-state judgment, run  
10 an execution through the sheriff, or if it's federal court,  
11 the marshal, and remove our property. So we are fearful of  
12 that and that could happen any day now.

13 And then, number five, the plaintiff is in danger of  
14 losing the property unless removed from Defendant. Well,  
15 based on what I just stated on four, and the fact that AHS is  
16 now involved in the purchase of the equipment and the assets  
17 of SA Hospital, we are in absolute danger of losing the  
18 property. They are -- S- -- NF- -- sorry, AHS -- I've got to  
19 get my acronyms right. AHS is an out-of-state entity also.  
20 And while you've heard assurances, and I'm sure you will hear  
21 assurances, that the property isn't going anywhere, that they  
22 want to run it. They have properties in North Carolina. They  
23 have properties elsewhere. Who knows -- if this fails, which  
24 I hate to say this, and it's -- and it's sad to say this, but  
25 when -- I shouldn't even say "if." When this hospital, sadly,

1 fails, they're not going to keep the equipment there. They're  
2 going to take it away. It's going to disappear.

3 And unless you grant us the relief that we're  
4 seeking, there is a serious threat, not only from AHS, but  
5 from other creditors that this property will disappear. That  
6 these assets that we own, that NFS property owns, and NFS  
7 property has a lien on, two separate categories, are going to  
8 disappear.

9 So I believe, Your Honor, by our pleadings which are  
10 extensive, as you know, we have established the basis and the  
11 right for a prejudgment attachment. And we've also  
12 established our right to a replevin which is what we're asking  
13 the Court to do with, essentially, the prejudgment attachment.

14 Your Honor, I am certainly open to any questions  
15 that you may have about anything that we've filed or any of  
16 the presentation that I've made today. I'm happy to answer  
17 anything that you might want to ask. Thank you.

18 **THE COURT:** Can you tell me what bond you are  
19 prepared to post?

20 **MR. SCHERCK:** We are prepared to post a bond equal  
21 to the value of the equipment which is approximately -- ah,  
22 thank you, Kiran -- \$2,113,599, is what -- excuse me. And I'm  
23 glad you asked that, Your Honor. We valued the equipment  
24 based on remarketing, resale. It was done internally because,  
25 again, we don't have access to the equipment, so we can't see

1 it. We can't see if it's in great condition, terrible  
2 condition, whatever condition. So we, basically, had our  
3 internal people come up with that valuation based on what this  
4 type of equipment that's subject to the lease could be sold  
5 for.

6 And we're ready to post that. Obviously, any  
7 prejudgment attachment order would be subject to, as I  
8 understand the law, to posting the bond, and we would stand  
9 ready to post that bond.

10 **THE COURT:** And are you proposing then that the  
11 marshals go into the hospital and remove all of the equipment?

12 **MR. SCHERCK:** We -- we are proposing that. However,  
13 in conjunction, and I would, obviously, want to discuss this  
14 with my clients, should the Court be inclined to grant us, we  
15 understand it's an operating hospital. You know, we've been  
16 trying to work with them for almost seven months. So we would  
17 be willing to work with a reasonable lying-down period of the  
18 hospital so we can take our equipment. We would not -- we  
19 understand this. We're not out there to destroy people's  
20 lives. We just -- we just want to get paid and get our  
21 equipment back.

22 So if the Court is inclined to grant our motion,  
23 which I think there's an absolute legal basis to do so, then  
24 we would certainly work out a reasonable schedule for the  
25 equipment to be removed and to be inventoried and removed so

1 that the patients can be relocated. The patients can be  
2 protected. I can safely say that without consulting with my  
3 client because I am sure that's exactly how they feel and what  
4 they'd be willing to do.

5 So if you would grant our motion today, and then we  
6 post the bond, we would not immediately send in the marshal to  
7 remove it. Excuse me. Sorry. We would want something in the  
8 order, as you've indicated earlier, that the equipment would  
9 not be removed, and then we would come up with a reasonable  
10 time frame to have the equipment then removed in an orderly  
11 basis so that the patients could be relocated to another  
12 hospital. Thank you, Your Honor.

13 Any other questions? Sorry.

14 **THE COURT:** All right.

15 **MR. SCHERCK:** Thank you, Your Honor. I appreciate  
16 it.

17 **THE COURT:** Mr. Klein?

18 **MR. KLEIN:** Yes, Your Honor. Mayer Klein, Frankel  
19 Rubin Klein on behalf of SA Hospital. Thank you.

20 So a few points preliminarily. As the Court noted  
21 originally, no notice was provided for this particular  
22 hearing. Now, there's a question in my mind as to --

23 **THE COURT:** Well, that's not actually true,  
24 Mr. Klein, because the Court provided you notice this morning,  
25 even though Plaintiff requested that it receive this relief

1 ex parte, which the statute does allow. So it's not true that  
2 you did not receive notice of that because I made sure to  
3 provide you notice of that and that's how you are here today.

4 **MR. KLEIN:** And that is --

5 **THE COURT:** You may not have received notice last  
6 week, but, obviously, you and your client have been aware of  
7 the ongoing nature of this dispute for quite some time.

8 **MR. KLEIN:** Yes, Judge. And I misspoke. The Court  
9 did provide us notice this morning. We appreciate that. I'm  
10 just saying from the plaintiff's perspective, whatever reason,  
11 NFS sought to do this without notice. I think the  
12 presentation that we would make to Your Honor would include  
13 some filings, counter-affidavits, which could be filed and  
14 will explain the situation in greater detail. Obviously, with  
15 the Court just notifying us this morning is not enough time to  
16 put that together to give you a counter-affidavit.

17 So as I go through the proceedings, I ask the  
18 Court's consideration that certain things can't be of the  
19 record on behalf of SA Hospital because there's not enough  
20 time to put that together.

21 That being said -- and Plaintiff has been in  
22 communication with my office, NFS, for months, and knows where  
23 I am. In fact, plaintiff's counsel litigated, as he  
24 indicated, another matter, both with SA Hospital and with AHS,  
25 and plaintiff's counsel knows who the attorneys are. And we

1 could have done this with notice. I don't think, certainly  
2 not my office, and certainly not AHS and their counsel were  
3 going to be notified and take away equipment from the  
4 hospital. The people and attorneys, Judge, on this call would  
5 not engage in any such process.

6 That being said, again, before I turn to what  
7 Plaintiff has pled, I think it's important to share with the  
8 Court what transpired in Massachusetts. So about 30 days or  
9 so ago, NFS filed another lawsuit in Massachusetts in the  
10 trial court of Massachusetts, Cause No. 2377-CV-00066. And in  
11 that suit, NFS brought a claim, a lawsuit, against SA Hospital  
12 Acquisition Group, LLC, the same defendant in this case, and  
13 then sued guarantors Ben Klein, no relation, Jeffrey Ahlholm,  
14 and Lawrence Feigen, and sued them for the exact same items  
15 here, breach of contract and then a guarantee action.

16 So the collection action has been instituted. You  
17 can't have more than one action at the same time. The  
18 collection action has been instituted, both against my client  
19 and against the guarantors. So what are we here for now?

20 Plaintiff has filed not a collection action,  
21 supposedly, but Plaintiff has filed an action for a writ of  
22 prejudgment attachment. And the very specific standards, and  
23 Plaintiff has talked about through its counsel, what are the  
24 standards? There are three things that have been pled which  
25 would give rise to a prejudgment attachment.



1 I don't think any one of them apply. Firstly,  
2 plaintiff says 521.010(1), where the defendant is not a  
3 resident of the state. It's unclear, Your Honor, and I would  
4 need time to brief this for you should you desire further  
5 legal argument on this, whether or not under this section  
6 we're deemed to be a resident of the state. The reason I say  
7 this is there's no question -- we're all familiar with the  
8 fact that there's a great deal of discussion in some of the  
9 recent case law, that when you deal with an LLC, you look at  
10 where its members are housed, where they reside. And my  
11 clients have an LLC and the owners reside outside of Missouri.  
12 So from that standpoint, we're not a resident of the state.

13 But from the standpoint of does the property  
14 actually exist in St. Louis, in Missouri? Yes. And we only  
15 conduct business in Missouri. So the issue, again -- the  
16 narrow issue is defining residency under that statute for  
17 purpose of a prejudgment attachment. I don't see the case  
18 law, Your Honor, on that yet. Again, I would need a little  
19 more time to brief that for you if you wanted.

20 All I'm saying is my client, while -- it only  
21 conducts business in Missouri. I'm giving you the factors to  
22 consider that maybe we are a resident. We only have business  
23 in Missouri. We only have bank accounts in Missouri. We have  
24 500 employees and they're all only in Missouri. We file a  
25 Missouri tax return. We have business records only in

1 Missouri. We're only authorized to do business in Missouri.

2 So query whether or not this is a resident of  
3 Missouri or not, and if it is not a resident of Missouri, I  
4 understand Plaintiff's point, but I think I haven't seen the  
5 case law yet. I don't have enough time yet. But it seems to  
6 me under this particular statute, we might be deemed a  
7 resident of Missouri. That's the first point.

8 Moving from that, and as Plaintiff's counsel says,  
9 he doesn't really want to get a prejudgment attachment solely  
10 on the basis of residency versus no residency. So what does  
11 Plaintiff point to? Plaintiff points to the other two aspects  
12 of its claim, 521.010(9) and 521.010(10). (9) says you can  
13 get a prejudgment attachment where Defendant's about to  
14 fraudulently convey or assign his property or effects so as to  
15 hinder or delay creditors. (10), very similar, about to  
16 conceal, remove, or dispose.

17 I can tell Your Honor, and we'll be happy to file an  
18 affidavit within 48 hours, that absolutely 100 percent, we are  
19 not about to fraudulently convey property, assign property,  
20 effects. We have no intention to do that. We have never had  
21 an intention to do that.

22 This is -- with all due respect, this affidavit is  
23 false that Plaintiff has filed. There is no basis for it. At  
24 no time have we ever done that, have we ever contemplated  
25 that. We are serving the patients in this hospital. We're

1 diligently working to continue to do that.

2 Judge, Plaintiff says, Well, they're selling --  
3 they're selling the assets. Do we want to consider every sale  
4 of a hospital as a fraudulent conveyance? Obviously, we're  
5 going to work through this. My firm and the counsel for AHS,  
6 hopefully, have a decent enough reputation. We're not going  
7 to create an asset purchase agreement to go ahead and  
8 fraudulently dispose of NFS' assets.

9 Whatever NFS has, and we'll put this in an  
10 affidavit. And I'm speaking -- I'd be happy to be sworn if  
11 that's what the Court needs in this situation -- on behalf of  
12 my client, the hospital. We are not selling any asset. Any  
13 asset that belongs to NFS. We're trying to sell the hospital  
14 so that AHS, which specializes in these distressed situations,  
15 can come in and take care of patients in this area which is a  
16 troubled area, a difficult area to find good care, and we've  
17 located AHS and we're close to working out a deal.

18 At no time, as an officer of the court, was there  
19 ever any provision discussed, contemplated in writing, in any  
20 form, saying we are going to sell property belonging to NFS.  
21 Never happened. Never contemplated. Never would happen. All  
22 of NFS property will always remain NFS property. Should NFS  
23 and the purchaser reach a deal with regard to an assumption of  
24 the lease, then the lease will be properly and duly assumed.  
25 But it is -- it's not honest to say there was any effort to

1 ever fraudulently convey any property. It's simply not the  
2 case. Never contemplated. Never thought about.

3           It seems to me, Judge, that this is really -- and I  
4 think Plaintiff's counsel, to some extent, said this. It's  
5 really a collection action. They want to be paid. And I also  
6 represent creditors who want to be paid also. I get that.  
7 And we're trying to work to accomplish that. But the issue is  
8 not a collection action right now. The issue is whether we  
9 fall within the statute of a prejudgment attachment. And  
10 those three points that were mentioned by NFS, resident, we've  
11 talked about -- and that's not the main issue -- the fraud,  
12 the concealment. It's not true. No one's concealing  
13 anything.

14           We will stipulate now on the record. NFS can come  
15 in and at a reasonably scheduled period of time within  
16 72 hours, we will -- I -- my client, owns the hospital. I  
17 will direct -- I say this as an officer of the court. I will  
18 direct AHS who's there every day managing it to cooperate --  
19 I'm sure they'll speak for themselves and agree -- to  
20 cooperate and allow Plaintiff to come in, and without  
21 disturbing the care of the patients, to come in and fully  
22 inventory everything that it has a collateral position on and  
23 make sure.

24           And I will personally report back to the Court. If  
25 I have to send one of my lawyers down to walk through to make

1 sure this happens smoothly, we will do that. And NFS should  
2 be able to reasonably show with due notice, and we can work it  
3 out, no problem, 72 hours, they can walk through, bring  
4 everybody they want to that's reasonable and go through, and I  
5 don't know if they tag it -- I don't know if that makes  
6 sense -- but whatever the inventory process that's reasonable,  
7 we can engage in that and make sure it's there. So that will  
8 be done.

9 We will stipulate -- we will stipulate no property  
10 will -- from this NFS leased property, no property will leave  
11 this hospital without this Court being fully apprised of  
12 what's happening in advance and blessing this -- blessing the  
13 matter if that is what is required. We're not fraudulently  
14 conveying. We're not even thinking of moving property from  
15 the hospital. We're here to care for people.

16 They can inventory it with reasonable safeguards to  
17 make sure no patients are disrupted. We will not move one  
18 piece of property. Forget all of it. Nothing will be moved.  
19 We have no intention to do this and I'm sure we will work  
20 together. We -- I, personally, am instructing AHS as the  
21 manager to fully cooperate with this process.

22 As to whether or not, there was some mention at the  
23 end by Randy that maybe we'll sell it to somebody else. I can  
24 tell you again. Whenever you're in a negotiation, Judge, of  
25 course, you can't say for sure 100 percent that the deal with

1 AHS is going to close in a week or two weeks. I can't tell  
2 you that because we know that sometimes something doesn't  
3 close. So if it doesn't close with AHS, we're going to sell  
4 it to somebody.

5 My pledge to the Court, my pledge to all parties  
6 concerned, is it doesn't matter who it's sold to. The same  
7 rules apply. It will -- this NFS property will not leave the  
8 hospital. Period. We will sign off on whatever is necessary  
9 to assure that. All of NFS -- all of the property that NFS  
10 has leased to us will not leave the hospital.

11 **THE COURT:** Well, Mr. Klein, can you tell me, in the  
12 discussions that you have had with AHS with respect to the  
13 sale, are you proposing to sell to AHS this leased property?

14 **MR. KLEIN:** No. We are proposing to sell whatever  
15 we have a right to sell. Anything that is leased, we are  
16 proposing to have AHS pick up the lease and have -- but  
17 that's -- obviously, there's a two-part process. You come to  
18 a -- I guess we'll call it a contract, Your Honor, where it's  
19 agreed to by everybody, this is what should happen. And then  
20 there's a period of time before the contract is closed where,  
21 at any sale, you go and you try to say, Okay, we'll be happy  
22 to take over the lease. And I know there have been  
23 discussions -- I'm going to let AHS talk about it -- but AHS  
24 dealing directly with NFS. That would not be for me to say.  
25 That would be for AHS to say.

1 But we are not selling now or ever any property  
2 belonging to anyone else. Be that NFS or any other property.  
3 None of it is being sold. All we're selling is our interest  
4 that we have as the owner/operator of the hospital. If we  
5 hold a leasehold interest, we're going to assign it to the  
6 extent the lease provides for that. And if it doesn't provide  
7 for that, it would be required to have a new lease entered  
8 into between AHS or whoever buys it and the lessor.

9 **THE COURT:** All right. Thank you.

10 And just let me ask counsel for AHS because  
11 Mr. Klein has, in fact, made certain representations about  
12 what his client would be directing your client to do. And is  
13 there anything that AHS wants to place on the record contrary  
14 to what Mr. Klein has represented?

15 **MR. STOEBERL:** The only thing I wanted to say,  
16 Your Honor, I'm just making an objection because they really  
17 have no standing here. This action is only directed against  
18 SA Hospital. I'm just making an objection for the record.

19 **THE COURT:** I understand that.

20 **MR. STOEBERL:** Thank you, Your Honor. That's all I  
21 wanted to say. Thank you.

22 **MR. RISKE:** Tom Riske for the record on behalf of  
23 AHS. I guess just as a preliminary matter with respect to the  
24 standing issue, I guess I would say, you know, they brought us  
25 into this by alleging all of these, you know, frankly,

1 fraudulent acts that they said we are either doing or in the  
2 process of doing. So I believe we have standing for that as  
3 well as the fact that they've acknowledged that we're a  
4 secured creditor with potentially an interest in some of this  
5 property.

6 But with that, I'll be very brief, Your Honor. I  
7 would -- you know, I don't need to restate everything that  
8 Mr. Klein said. I think he did a very good job of speaking to  
9 the issues. I would say on the record that we would support  
10 the same stipulation that he put on the record. And just  
11 going a little bit further of just explaining why it,  
12 you know, a sale of their assets is not taking place in this  
13 case.

14 You know, it's kind of like a bankruptcy case where,  
15 you know, you can't -- there's certain types of leases or  
16 executory contracts that, you know, you can't compel the  
17 assignment of the effects, and, you know, we're not in a  
18 receivership here. We're not in a bankruptcy proceeding here.  
19 So, obviously, we need their consent to the extent that we're  
20 going to accept into the shoes of them and operate under the  
21 existing documents. Or we can enter into negotiations with  
22 them to have a new agreement. And that is what has been going  
23 on since we've been involved in this process, Your Honor.

24 And I will state for the record, we -- you know,  
25 there have been delays as, you know, both parties have said on



1 the record. But this is a complicated deal, as Mr. Scherck  
2 acknowledged. There have been a lot of issues to deal with  
3 voluminous creditors in this case to try and push this sale  
4 forward.

5 But I would submit for the record and to  
6 Mr. Scherck's comment about, you know, NFS' comfort level. I  
7 think they're in probably the best position of any creditor in  
8 this mess, Your Honor. You know, you've heard that they're in  
9 a first position on these assets. You've heard that the  
10 parties are working diligently to try and make them happy and  
11 try to get an arrangement in place if the sale goes forward.  
12 And if the sale does not go forward, I don't think that they'd  
13 be any worse off given that their valuation of their  
14 collateral exceeds the amount that they are -- that they  
15 allege they're owed under the circumstances.

16 Again, there have been no representations in any of  
17 the e-mails that were attached to their papers of either SA or  
18 AHS making any threats or anything to sell, remove, or do  
19 anything to this property. And, again, we'd be more than  
20 comfortable to enter into the stipulation, and with  
21 Mr. Klein's directive with respect to granting access, of  
22 course we will comply with that.

23 So with that, Your Honor, I'm happy to answer any  
24 questions. But, you know, given the position of the parties,  
25 I wanted to keep our comments pretty brief.

1           **THE COURT:** All right. Anything further,  
2 Mr. Scherck?

3           **MR. SCHERCK:** Yes, please. And I'll be very brief,  
4 Your Honor. First of all, I think it is completely  
5 disingenuous to say that they've been working diligently.  
6 That is nonsense. We have been working diligently to try to  
7 get them to either assume the lease as they -- or sign a new  
8 lease as they've promised to do so or make payments. This is  
9 not a collection action, contrary to what Mr. Klein said.

10           This is an action for replevin, unjust enrichment,  
11 and conversion. And the only reason we had to go to these  
12 means is because they ignored us, they refuse to give us  
13 access to the equipment, they refuse to make payments. And  
14 I'm going to read a little bit from the affidavit. And these  
15 are e-mails from representatives of -- I'm sorry -- text  
16 messages also. But I'm going to read and I will point out in  
17 the affidavit.

18           44. On December 28, 2022, Gill, who is a  
19 representative of AHS, advised NFS via text messages that the  
20 new lease documents between NFS and AHS parties would be  
21 signed and returned and an initial wire payment made by  
22 AHS Parties that day. That's in an e-mail. Okay?

23           45. The AHS Parties did not execute the new lease  
24 documents and did not make an initial wire payment to NFS that  
25 day as promised.

1           So this is back in December now, Judge, the end of  
2           December. Over two months ago that we have now been dealing  
3           with AHS on this. Much longer with SA Hospital.

4           Then on December 30, 2022, again, I'm reading from  
5           the affidavit, paragraph 46. Gill advised NFS that although  
6           the AHS Parties had purchased the assets of SA Hospital --  
7           they're telling us, they purchased it through an asset  
8           purchase agreement, they had not closed on the sale. So  
9           they're admitting the purchase. And that SA Hospital was  
10          actively seeking to sell its assets to a new buyer other than  
11          AHS Parties, which puts us in further jeopardy.

12          And when Mr. Riske said we have a first priority  
13          lien, we do, on the equipment that is not leased. I want it  
14          to be clear for the record. We own the equipment. It's  
15          leased. SA Hospital does not own it. We own it. It's ours.  
16          Then we also have a first priority lien on all the other,  
17          quote, assets as per our UCC-1 financing statement.

18          Your Honor, we're losing money every day. And this  
19          is not a collection action. We're entitled to recover our  
20          lease payments. But we own the equipment. So we're entitled  
21          to the equipment also. This is not either/or. We're  
22          entitled -- they're in default. You have not heard one  
23          statement from anybody on the other side that they're not in  
24          default. They're in default. We're entitled in the  
25          Massachusetts action for the collection which is what we're

1 pursuing, and in this action, for the equipment which we own.

2 Thank you very much.

3 **THE COURT:** All right. And just with respect to  
4 that last point, Mr. Klein, I take it you are not contesting  
5 that your client is, in fact, in default?

6 **MR. KLEIN:** That is correct, Your Honor.

7 **THE COURT:** Okay. Anything further from either  
8 party?

9 **MR. KLEIN:** Judge, just briefly, if I may?

10 **THE COURT:** Very briefly.

11 **MR. KLEIN:** Okay. Thank you. I just want to call  
12 the Court's attention to a case called *Chevron USA v. 11500*  
13 *Manager, LLC*. It is -- I'll get you the cite in a second.  
14 It's a 2009 case. It's the Western District case that's cited  
15 by Judge Ortrise Smith. And there on page -- it's cited as  
16 2009 US District Lexis 58330, on page 3 of 4. It was a  
17 prejudgment attachment case.

18 And the Court says -- Judge Smith says, A  
19 prejudgment attachment may be obtained in circumstances as  
20 permitted by state law, as we all know. And it goes on to  
21 say, However, there's no right to a prejudgment attachment.  
22 And he states that such remedies are not favored, principally,  
23 because they are subject to a constitutional attack on due  
24 process grounds. This is particularly the case when, as in  
25 that case, and as here, the relief is sought ex parte.

1           Plaintiff's unjustified failure to notify Defendants  
2 of the hearing causes the Court to believe a prejudgment  
3 attachment should not issue. So that's what he found.

4           And what I see is, in the Massachusetts case, which  
5 we were just sued, there was a lawsuit to collect the  
6 judgment. And it wasn't only for the lease, Your Honor. And  
7 I'm quoting from that case and I gave you the cite where they  
8 filed the lawsuit. They want, in that case, the damages,  
9 which include the fair market value of the unreturned  
10 equipment. So in that suit, they're suing for a million six,  
11 plus -- I'm reading the remedy from my phone -- plus the fair  
12 market value of the unreturned equipment. This suit was filed  
13 January 19, 2023.

14           So NFS is seeking the lease. NFS is seeking  
15 whatever is out there with regard to unreturned equipment,  
16 which hasn't even happened yet. But NFS is saying, We want a  
17 judgment in Massachusetts against the hospital and against all  
18 the guarantors. That's already there.

19           So the only real issue here is not about payments  
20 being made. The only real issue is are we dealing with  
21 grounds for a prejudgment attachment? And that's when we take  
22 you back into the fraud discussion. There is no fraud. There  
23 never was a fraud. We were never going to sell any assets  
24 belonging to NFS. Not now. Not ever. We're happy to  
25 stipulate to that. I will put that -- this is an affidavit.

1 You can count this an affidavit, all that I've said today on  
2 behalf of the hospital.

3 We hope to have that sale culminate in a closing  
4 hopefully before too long and we are, again, happy to have NFS  
5 come out in the next few days. I'll have somebody from my  
6 office. I'm directing AHS to cooperate to inventory that.  
7 And this hearing without notice, this prejudgment attachment,  
8 simply states things that are not true. Never was, now or  
9 ever, any intent to remove any equipment from this hospital,  
10 anything that NFS has, never was any intent or ever happened  
11 for any sale of equipment belonging to NFS. And I'm sure it  
12 will not happen because that is not what we're doing. We're  
13 trying to serve the needs of the community and take care of  
14 the residents. That is our goal. Take care of the patients,  
15 Your Honor. That is our goal.

16 **THE COURT:** Is there anything further?

17 **MR. SCHERCK:** Briefly, Your Honor, with respect to  
18 the fraud. Here's an example of fraud, and I read it earlier.  
19 On December 28, 2002, Gill advised NFS via text messages that  
20 the new lease documents from NFS and AHS Parties would be  
21 signed and returned and an initial wire payment made by the  
22 AHS Parties that day. How can we possibly trust anyone  
23 involved? That was over two months ago. How can we trust  
24 anyone involved here that they are not going to take the  
25 equipment, have it disappear, transfer it elsewhere, when they

1 make these representations to us and then they don't live up  
2 to them? That is all.

3 **MR. KLEIN:** This -- that's a claim. I don't know.  
4 AHS can address this. All I know is my client's not involved  
5 in anything having to do with a prejudgment attachment. Randy  
6 has an issue with regard to what AHS says. I guess I'll let  
7 AHS say that. But I have no idea what that has to do with  
8 what's before you.

9 **MR. RISKE:** Your Honor, Tom Riske. I won't go into  
10 settlement discussions, but I mean, I can say I believe, and I  
11 believe if you read all the e-mails that are attached, AHS has  
12 been very straightforward with NFS in the fact that we are  
13 happy to get on board once this deal closes. Again, we are  
14 looking to assign or have a new lease agreement or something  
15 to deal with this issue that has to be dealt with.

16 So -- and I guess I also would say for the record,  
17 no one is more frustrated than us that this deal hasn't closed  
18 and we are working to get it closed which would, in turn,  
19 hopefully, resolve this issue. The idea that any sort of  
20 discussions or negotiations between the parties represent some  
21 sort of fraud, I think, is, you know, frankly, beyond the  
22 pale, Your Honor.

23 **THE COURT:** All right. Anything further?

24 **MR. SCHERCK:** One other very quick sentence,  
25 Your Honor. How long must we wait?

1           **THE COURT:** All right.

2           **MR. SCHERCK:** We've been trying for --

3           **THE COURT:** I'm through. I'm through. I'm through.  
4 I understand you have been waiting. All right?

5           **MR. SCHERCK:** You got it. You got it. Thank you,  
6 Your Honor.

7           **THE COURT:** I have heard all of this. I have read  
8 all of it. And I am going to deny the request for a  
9 prejudgment writ of attachment. But I am only denying it if,  
10 in fact, the parties are in agreement to enter into a consent  
11 on the record that within no more than 72 hours, the parties  
12 will cooperate with the plaintiff to permit a full inspection  
13 of the property and assets that are subject to its UCC  
14 financing statements, and in particular, the matters that are  
15 subject to the lease. And should the plaintiff wish to tag  
16 that property, it may do so.

17           Secondly, that the defendant, SA Hospital  
18 Acquisition, which is the only defendant to this prejudgment  
19 attachment, represent that it will take no action to transfer  
20 or permit any other entity to transfer this property and that  
21 it will safeguard the existence of this property pending this  
22 litigation.

23           Now, you know, folks, this is only going to delay  
24 things so long. I am going to go back to the grounds for  
25 prejudgment attachment. And that is where the defendant is



1 about fraudulently to convey or assign his property or effects  
2 so as to hinder or delay his creditor or has already done so.  
3 I do not see any evidence of that.

4 To the contrary, we have an operating hospital and  
5 the equipment, according to Defendants, is still there. They  
6 intend to continue to have it be there and to, in fact,  
7 continue to use it. Whether they are entitled to continue to  
8 use it is a different matter. And I will get to that in just  
9 a moment.

10 Where the defendant is about fraudulently to  
11 conceal, remove, or dispose of his property or effects so as  
12 to hinder or delay his creditors or has already done so. Now,  
13 the aspect of that that gave me great pause was conceal. And  
14 I was and continue to be terribly concerned by the fact that  
15 these defendants have not permitted NFS to get into the  
16 hospital and inspect the property that it is entitled to,  
17 perhaps, replevin. All right? And that gives me great  
18 concern. And that is the one aspect of this that has given me  
19 great concern.

20 The mere fact that the parties are trying to sell  
21 the hospital does not tell me -- no one has shown me the terms  
22 of that contract. I do not see anything here suggesting that  
23 any sale to AHS or any other entity would be a sale that is  
24 jeopardizing the plaintiff's interest as opposed to a sale  
25 that would be subject to the plaintiff's interests. Indeed,

1 it appears that the parties have been discussing a proposed  
2 lease.

3 Believe me, I am terribly sympathetic to the  
4 plaintiff's position. It is quite clear that if this  
5 transaction is going to take place, it has taken a very, very,  
6 very long time. And it appears that AHS has also made  
7 promises that it has not kept. But the reality is that when  
8 people are attempting to close a significant transfer of  
9 property like this, things do not always transpire as the  
10 parties hope they will and do not move on the schedule that  
11 they hope they would. I am unwilling to read that e-mail from  
12 AHS saying we're going to get it to you today as an indication  
13 that it is fraudulently attempting to conceal, remove, or  
14 dispose of its property or assets. Indeed, it's SA's property  
15 and assets. And I do not see that as evidence of that.

16 I see that as evidence of parties to a proposed  
17 transaction that are making promises that they were not in the  
18 position at that moment in time to keep. But that relates to  
19 a transaction to sell the hospital. And I do not see any  
20 evidence here that the defendant is about to fraudulently  
21 conceal, remove, or dispose of its property or effects so as  
22 to hinder or delay the creditors or that it has already done  
23 so.

24 As I said, the sole aspect of this that has given me  
25 concern is the concealment aspect. And so I am willing to

1 withhold taking further action on this writ of attachment  
2 subject to the defendants' agreement -- and I need the  
3 agreement of both defendants -- that they will, in fact,  
4 facilitate, not just permit, but facilitate the full  
5 inspection of these assets and property -- and property by the  
6 plaintiff.

7 And, certainly, should that inspection give rise to  
8 further cause of concern from the plaintiff, we can hear about  
9 it then, if, in fact, the plaintiff gets in there and it's  
10 just not there anymore. The assets aren't there. The  
11 property's not there. Then, obviously, we are talking about a  
12 totally different situation.

13 Now, I understand the plaintiff's concerns. And,  
14 obviously, folks, I need those two things. The commitment to  
15 facilitate inspection, and should the plaintiff wish to do so,  
16 tag that property, and secondly, the agreement -- basically, a  
17 full standstill agreement that the plaintiff will do -- that  
18 the defendants will do nothing to transfer, or in any other  
19 manner, jeopardize the property and the property interests of  
20 the plaintiff without approval of this Court.

21 Now, that means that the SA Hospital's not going to  
22 enter into any deal to sell the hospital without full  
23 disclosure to NFS so that NFS can be confident that its  
24 interests are being protected. I understand that there may be  
25 other creditors out there with respect to SA Hospital. But on

1 this record, I cannot find that these particular assets are at  
2 risk of being transferred or in any other way concealed or  
3 prohibited.

4 Now, folks, this is a very short-term situation  
5 because the reality is the lawsuit that the plaintiffs have  
6 brought here is a lawsuit for replevin. And absent you all  
7 closing this deal and assuming the lease or making the lease  
8 payments in a manner that is acceptable to NFS, at this  
9 moment, I am hearing no defenses to the plaintiff's action for  
10 replevin. But that, of course, is an action on full notice to  
11 the parties with the parties' ability to defend that action  
12 should they have any defenses.

13 And, you know, frankly, I don't know what's going to  
14 prevent the plaintiff from immediately, after providing,  
15 you know, proper notice to the defendants, for immediately  
16 moving for judgment on its claim for replevin which would,  
17 in fact, entitle the plaintiff to retrieve this property.

18 Now, that is -- from the standpoint of the  
19 community, that would be a terrible shame if the plaintiff  
20 were, in fact, to retrieve all of this equipment in a manner  
21 that causes the closing of the hospital. Whether or not that  
22 is an inevitable -- whether the hospital is going to be closed  
23 in any event, I don't know. Clearly, this sale has taken much  
24 longer than the parties anticipated. And if, in fact, the  
25 parties are going to close on this sale, they're going to have

1 to do it before the plaintiff is in the position to obtain  
2 replevin under the law.

3 If, in fact, it has leased equipment to the  
4 defendant and the defendant is in default, which the defendant  
5 has admitted, and is not in a position to cure that default,  
6 then I don't know what is going to prevent the plaintiff from  
7 obtaining replevin of this equipment.

8 And so if you all are going to enter into an  
9 agreement for the sale of this hospital from the community's  
10 standpoint, I certainly hope that you do. But you can't take  
11 forever to do it. You cannot take forever to do that at the  
12 expense of the plaintiff and just expect the plaintiff to do  
13 nothing to protect its own interests.

14 Default occurred in September. We're talking about  
15 six months of default here. From all I can tell from review  
16 of these documents, the plaintiff has been very patient. But  
17 there is an end to that if, in fact, the plaintiff has  
18 properly entered into these agreements to lease the equipment  
19 to the defendant and the defendant has not made payment.

20 At some point in time, the plaintiff is entitled to  
21 get its equipment back or to get paid, one or the other. And  
22 the mere -- I find that a writ of attachment in this  
23 particular instance is an extraordinary relief and will not  
24 cause this equipment to, effectively, be removed on a writ of  
25 attachment, when, in fact, the plaintiff has its replevin

1 action pending because, on this record, I do not find that  
2 these assets are about to be fraudulently transferred.

3 Now, I need to hear first from the defendants  
4 whether they are in a position to make -- to provide the  
5 assurances that this Court is requesting.

6 **MR. KLEIN:** Thank you, Judge. On behalf of  
7 SA Hospital, Mayer Klein, Frankel Rubin Klein, we will provide  
8 full assurance to the Court and on the record that, within  
9 72 hours, we will facilitate NFS being able to go into the  
10 hospital and fully inspect all of its property and to make  
11 sure that that is done to their satisfaction.

12 We will direct AHS as the present manager of the  
13 hospital to fully cooperate and to also join in that  
14 facilitation so there's no issues as to, well, who should have  
15 done what. We will take that responsibility to make sure AHS  
16 fully cooperates and joins in the facilitation of NFS looking  
17 at their entire equipment. If they want to tag it, I don't  
18 know how tagging relates to servicing the -- to the extent it  
19 doesn't interfere with what you have to do when you take care  
20 of patients, of course, we will agree to tagging without any  
21 question, if that's what NFS wants. And there will be no  
22 action, no transfer of any kind, of any way, shape, or form,  
23 that will be transferring NFS' property. Any sale that takes  
24 place, we will certainly let NFS and the Court know if the  
25 sale is about to conclude. This is the sale that's going to

1 happen. Here is the property that's NFS. Here's how we  
2 intend to have it handled.

3 My belief, Your Honor, is not only will we let  
4 everyone know, but the new buyer will almost buy -- almost  
5 automatically have communication as part of this deal with NFS  
6 so that NFS will be assured, not only from me as the seller's  
7 point, but there's no way a buyer could come in without  
8 dealing openly with NFS and letting them know, We seek to buy.  
9 This is what we're going to be able to do as far as assuming  
10 the lease. So we are confirming everything that the Court  
11 asked us to confirm and we will stand by that and are  
12 committed to that.

13 **THE COURT:** Mr. Riske, is there anything that  
14 Mr. Klein has stated that AHS is not prepared to cooperate  
15 with?

16 **MR. RISKE:** Tom Riske on behalf of AHS. No,  
17 Your Honor. I believe we can commit to the same thing as  
18 outlined by the Court and Mr. Klein --

19 **THE COURT:** I don't want to find that Mr. Klein has  
20 made these representations and that AHS has come in and said,  
21 Well, no. The writ of attachment wasn't against us. We're  
22 not doing that.

23 **MR. RISKE:** Yeah. We will agree. We agree,  
24 Your Honor.

25 **THE COURT:** All right. Now, Mr. Scherck, is there

1 any reason that this does not properly protect your clients  
2 from the unlawful transfer and fraudulent transfer and  
3 concealment of this property as you move forward, as  
4 expeditiously as the law permits you to, to seek replevin of  
5 the equipment?

6 **MR. SCHERCK:** Your Honor, that was the best loss  
7 I've ever had. And I appreciate you saying what you did and  
8 making the comments that you did. I have one question, more  
9 of a clarification. What if -- and you said the property  
10 needs to be there. What if some of it is missing? What do we  
11 do under those circumstances?

12 **THE COURT:** I don't know. I mean, you'll --

13 **MR. SCHERCK:** Okay.

14 **THE COURT:** -- just have to go in --

15 **MR. SCHERCK:** Maybe we'll come back to the Court.

16 **THE COURT:** -- further evaluate and we will go from  
17 there.

18 **MR. SCHERCK:** Because we have a very specific list.

19 **THE COURT:** If, in fact, the defendants have done  
20 something to dissipate the assets --

21 **MR. SCHERCK:** Right. That's the main concern.

22 **THE COURT:** -- then you can deal with it, you know,  
23 when that happens. I assume in the normal course of life,  
24 it's possible that a piece of equipment, you know --

25 **MR. SCHERCK:** Right.



1           **THE COURT:** -- ended its useful life and someone  
2 stuck it in a closet somewhere. I don't know.

3           **MR. SCHERCK:** Right. I understand.

4           **THE COURT:** So we won't know that until you get in.

5           **MR. SCHERCK:** Until we get in there.

6           **THE COURT:** But prejudgment attachment is, honestly,  
7 a very extraordinary remedy here, especially in the context of  
8 an operating hospital where the defendants have an interest in  
9 having the equipment stay there and continue to use it. And  
10 so -- but I just want to make sure that everybody understands  
11 that the denial of a prejudgment writ of attachment is a very  
12 different thing than a determination based on the merits of  
13 this litigation with respect to whether the plaintiff is or is  
14 not entitled to replevin. That is very different.

15           And you all are all experienced counsel. You are in  
16 a position to evaluate how strong Plaintiff's case for  
17 replevin is. And if you all are going to try and do some form  
18 of sale of this hospital to save the hospital and continue its  
19 operation, which I hope you can, and if you're going to do  
20 that, then understand you're going to have to get back to the  
21 table with the plaintiff and give the plaintiff something more  
22 than empty promises. Okay? Because, right now, the point of  
23 those received is a bunch of empty promises. And perhaps they  
24 were all made in good faith, but that doesn't keep them from  
25 being empty. All right?

1           **MR. KLEIN:** Yes.

2           **MR. SCHERCK:** Yes. Your Honor, one --

3           **MR. RISKE:** Understood, Your Honor.

4           **MR. SCHERCK:** Yes, Your Honor. One other very brief  
5 statement. First of all, I hope you feel better. I've had  
6 COVID.

7           **THE COURT:** Thank you.

8           **MR. SCHERCK:** It's no fun. And it's no fun to work  
9 when you have COVID. So I appreciate you giving us all the  
10 time today. I appreciate all of that.

11           I will tell, just so the record's clear, that -- I  
12 mean, obviously, I will have a discussion with my clients.  
13 But it may be our intent to proceed with -- because there is a  
14 process for a motion for replevin as opposed to just on the  
15 lawsuit. And I can tell you that there is a significant  
16 chance, because I want full disclosure here, that we may be  
17 proceeding in that manner. Because as you can tell from my  
18 presentation today, we want this expedited. We want it  
19 resolved. And we're going to use whatever legal and proper  
20 means we can to do so. So I'm just saying that for full  
21 disclosure. That's all. Thank you.

22           **THE COURT:** All right. Now, just so that we can  
23 effectuate the representations that have been made here,  
24 Mr. Scherck, do you want to draft and provide to the  
25 defendants an agreement, a consent agreement, memorializing

1 these promises? I don't know if there's, like, for instance,  
2 additional detail you would like to put in with respect to the  
3 inspection. And understand, by 72 hours, that's the minimum.  
4 If for some reason there's something unique about the  
5 inspection and the plaintiff wants to delay that, I do not  
6 think that would be in jeopardy of the plaintiff's rights  
7 here. So that language should be, you know, that Plaintiff  
8 would be entitled to inspect within 72 hours or such later  
9 date as the parties may agree to.

10 And, Mr. Scherck, do you want to draft a document  
11 and provide it to the defendants memorializing this agreement  
12 and then the parties can sign that?

13 **MR. SCHERCK:** We will do so, Your Honor. Thank you.

14 **THE COURT:** Are the parties all willing to cooperate  
15 with Mr. Scherck to create and sign such a document?

16 **MR. RISKE:** Yes, Your Honor.

17 **MR. KLEIN:** On behalf of SA Hospital, Mayer Klein,  
18 yes, we are.

19 **THE COURT:** All right. Is there anything further  
20 that we need to take up at this time with respect to the writ  
21 of attachment?

22 **MR. SCHERCK:** No, Your Honor.

23 **THE COURT:** All right. Then thank you all. And we  
24 will draft up a very short order memorializing what I have  
25 ruled here subject to the parties' agreement, written

1 agreement, which will also be filed in the court record.

2 All right?

3 **MR. SCHERCK:** Yes. So, Your Honor, so I understand,  
4 there's going to be an order with respect to it, but then  
5 there's going to be this supplement agreement that's sort of  
6 going to be encompassed as part of that order, because as you  
7 had said, it's sort of contingent upon our ability to inspect  
8 and tag, if we like?

9 **THE COURT:** Absolutely. And if for some reason, if  
10 that's not happening, I assume I will hear back from you.

11 **MR. SCHERCK:** You will. Thank you, Your Honor.

12 **THE COURT:** Hopefully, I will be back in court by  
13 then. All right?

14 **MR. SCHERCK:** Thank you, Your Honor.

15 **MR. KLEIN:** Thank you, Judge.

16 **THE COURT:** All right. Thank you all.

17 **MR. STOEBERL:** Thank you, Your Honor.

18 **(The proceedings concluded at 11:55 a.m.)**

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CERTIFICATE

I, Carla M. Klaustermeier, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 52 inclusive and was delivered electronically and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 6th day of March, 2023.

/s/ Carla M. Klaustermeier  
Carla M. Klaustermeier, RMR, CCR, CSR, CRR  
Official Court Reporter